

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

POWER INTEGRATIONS, INC.,

Plaintiffs,

v.

FAIRCHILD SEMICONDUCTOR  
INTERNATIONAL, INC., FAIRCHILD  
SEMICONDUCTOR CORPORATION, and  
FAIRCHILD (TAIWAN) CORPORATION,

Defendants.

C.A. No. 08-309-LPS

JURY TRIAL DEMANDED

**DEFENDANTS' OFFER OF PROOF REGARDING EXCLUSION OF CUSTOMER  
LETTERS AND JUSTIN CHIANG TESTIMONY**

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Dated: November 8, 2018

The Court's grant of PI's motion *in limine* no. 2 (D.I. 969-2) excluded Fairchild's letters to customers and testimony regarding Fairchild's awareness of the status of reexamination proceedings and litigation defenses as evidence of Fairchild's good-faith belief that the asserted patents were invalid. (D.I. 984 at 2.) Pursuant to Federal Rule of Evidence 103(a)(2), Fairchild submits this offer of proof to identify the evidence it would have put before the jury if this evidence had been permitted at trial.

The testimonial and documentary evidence regarding the customer letters, if not excluded, would have shown that Fairchild did not induce customers to infringe and that Fairchild's behavior was not willful (D.I. 987), as follows:

- The customer letters were sent by the company's sales team to customers to keep them informed of developments regarding ongoing litigations.
- Fairchild had a reasoned belief that the ongoing reexaminations, which included multiple rejections of identical, substantially identical, and related claims to the claims in this lawsuit, supported Fairchild's belief that the asserted patent claims would ultimately be held invalid either by the Patent Office or through litigation. (*See, e.g.*, Ex.<sup>1</sup> A, PX-200 (FSG01244543).)
- After the Court entered an injunction, Fairchild complied with the terms of the injunction by sending letters to customers of the accused parts and informing them of the injunction, withdrawing indemnity, and explaining that U.S. importation would constitute infringement. (Ex. B, DX-2206 (FSG02220749).)
- Specifically, after the injunction was entered, Fairchild told customers, "We no longer make, use, sell or offer for sale in the United States, or import into the United States, the products [at issue]." (*Id.*)
- Fairchild only "continue[d] to sell [the products at issue] outside the U.S., on condition that, and with the understanding that, customers who purchase such

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<sup>1</sup> All "Ex." references herein are exhibits attached to the Declaration of Thomas J. Pardini in Support of Defendants' Offer of Proof.

products outside the U.S. will not import them into the U.S., either as individual products or within customers' finished goods or products.” (*Id.*)

As the Court recognized, “Fairchild’s communications with its customers are relevant to the issue of whether Fairchild induced those customers to infringe PI’s patents” and “plainly relevant” to this issue. (D.I. 984 at 3.) In addition, the probative value of the testimony is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

The Court also excluded evidence from Fairchild’s executive, Justin Chiang, regarding his high level knowledge of the status of the reexamination proceedings of the patents-in-suit and his high level knowledge of the non-infringement and invalidity defenses Fairchild had against the asserted patents. (Ex. C, 5/31/18 Chiang Dep. 22:23-24:1, 57:4-11, 69:5-70:14, 73:9-21, 76:4-21, 80:13-81:14, 97:11-22, 116:7-117:25.) As the executive running the business unit responsible for the sales of the accused products in this case during the relevant time period, Mr. Chiang’s excluded testimony was relevant to the issues of inducement and willfulness. It would have shown that the top decision-makers at the company, including the General Manager of the PCIA division for the products at issue in this case, knew that identical or substantially similar claims of the patents-in-suit had been rejected at the Patent Office and that Mr. Chiang had been informed by his technical leads that they believed the accused products had a non-infringing design to the patents-in-suit. As the Court recognized, Mr. Chiang had “general knowledge of the status of [reexamination] proceedings, and even of the positions being advocated in them,” but excluded on the basis that it did “not equate to actual, subjective belief by Fairchild.” (D.I. 984 at 2.) The knowledge of invalidity and non-infringement defenses by a key decision-maker within Fairchild—even if the knowledge was at a high level—has substantial relevance to the issue of whether Fairchild was willful in its continued sales during the course of the litigation.

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Respectfully submitted,

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